



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,949	11/27/2000	Frank M. Richmond	68050	5029

22242 7590 01/13/2004

FITCH EVEN TABIN AND FLANNERY
120 SOUTH LA SALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER

GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
----------	--------------

3635

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/722,949

Applicant(s)

RICHMOND, FRANK M.

Examiner

Brian E. Glessner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35,36 and 38-73 is/are pending in the application.
- 4a) Of the above claim(s) 39,43-47,57,61-65 and 72 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 53-56,58-60 and 66-70 is/are allowed.
- 6) ☒ Claim(s) 35,36,38,40,41,48-52,71 and 73 is/are rejected.
- 7) ☒ Claim(s) 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

The following office action is in response to the amendment filed on December 12, 2003. Claims 35, 36, and 38-73 are pending in the application. Claims 39, 43-47, 57, 61-65 and 72 are non-elected claims and are withdrawn from consideration.

Claim Objections

1. Claim 41 is objected to because of the following informalities: Claim 41 claims "at least one guide surface". However, claim 35 has already claimed at least one guide surface.

Therefore, it appears that the applicant should amend the claim to claim "the" at least one guide surface or, if the guide surface in claim 41 is a second guide surface, the claim should read "a second at least one guide surface. Appropriate correction is requested.

2. Claim 64 is objected to because of the following informalities: the preamble of claim 64 should be consistent with claim 61 since claim 61 is claiming a method and not an apparatus. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. Claims 35, 36, 38, 40, 41, 48, 51, 71 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Reicherts (4,449,338).

In regard to claims 35, 36, 38, 40, 41 and 73, Reicherts discloses an apparatus for installing building materials comprising a first surface 1 (see examiner's attachment) comprising a fastener comprised of a fastener opening and a fastener component 15, the first surface attached to a resting surface 2, at least one guide surface 3 continuous with the resting surface and extending away from a plane of the resting surface, at least one target surface 4 continuous with

Art Unit: 3635

the guide surface and extending away from a plane of the resting surface, and a second resting surface 5. The fastener is spaced apart from the resting surface.

In regard to claim 48, Reicherts discloses the claimed invention, wherein the device further comprises a positioning feature 20.

In regard to claim 51, Reicherts discloses the claimed invention, wherein the apparatus for installing building material is made from a material selected from the group consisting of wood, metal, plastic, and combinations thereof. Reicherts discloses that the material could be metal or plastic such as polyethylene or polystyrene or nylon, column 3, lines 52-54.

In regard to claim 71, Reicherts discloses the claimed invention, wherein the second resting surface is parallel to or nearly parallel to the target surface.

In regard to claim 41, Reicherts discloses the claimed invention, further comprising a second at least one guide surface 6 continuous with the second resting surface and extending away from a plane of the second resting surface.

Claim Rejections - 35 USC § 103

4. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reicherts (4,449,338) in view of Burgess (5,366,329).

In regard to claim 49, Reicherts discloses the claimed invention except for disclosing the use of a “one material thickness” spacer block. Burgess teaches that it is known to use a “one material thickness” spacer block 5b to provide a space for a drywall panel to be inserted. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said height block or spacer into Reicherts’ invention, because the spacer will provide additional clearance between the apparatus and the studs if needed. Further, the

Art Unit: 3635

examiner contends that the use of spacers where needed is capable of being determined by one having ordinary skill in the art.

5. Claims 50 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reicherts (4,449,338) in view of Guilmette (5,617,698).

In regard to claims 50 and 52, Reicherts discloses the claimed invention, except for the use of a tee support or adjustable positioning device. Guilmette discloses the use of a tee shaped adjustable positioning device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said device into Reicherts' invention, because the device will aid the user in placing the panels. The device will help the user to hold the panel until the at least one apparatus for installing building materials is moved into position to hold the panel. Also, the positioning device could be used as a safety device if one or more of the apparatus for installing building materials failed.

Allowable Subject Matter

6. Claim 42 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 53-56, 58-60, and 66-70 are allowed.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3635

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031.

The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

B.G
January 8, 2004

A handwritten signature in cursive script, reading "Brian Glessner", followed by a long horizontal flourish line.

**BRIAN E. GLESSNER
PATENT EXAMINER**